

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

Adam Wenzke,)
)
Plaintiff,)
)
v.) C.A. No.: 07-504-SLR
)
Correctional Medical Services, et al.)
)
Defendants.)

DEFENDANT WELCH'S ANSWER TO COMPLAINT

Defendant, Jim Welch, (State Defendant), by and through undersigned counsel, hereby answers the Plaintiff's Complaint as follows:

I. PREVIOUS LAWSUITS

State Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and therefore denies same.

II. EXHAUSTION OF ADMINISTRATIVE REMEDIES

A. There is a prisoner grievance procedure available at the Delaware Correctional Center at all times relevant to the complaint.

B. Plaintiff did not fully exhaust the available administrative remedies regarding each of the claims raised in the complaint.

C. State Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations that Plaintiff wrote two grievances and appeals, and therefore denies same.

III. PARTIES

A. Plaintiff, Adam Wenzke, is an inmate incarcerated in the custody of the Delaware Department of Correction, and currently housed in the Delaware Correctional Center, Smyrna, Delaware. Plaintiff is *pro se*, and has been granted *in forma pauperis* status.

B. Defendant, Jim Welch, is currently the Health Services Administrator for the Delaware Department of Correction, Dover, DE. The remaining allegations are not directed toward Defendant Welch, therefore no response is required.

IV. STATEMENT OF CLAIM

1 - 35. To the extent that the allegations are consistent with Plaintiff's medical records, they are admitted. By way of further answer, Defendant Welch is without sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations for which he has no personal knowledge and involvement, and, therefore, denies same.

36 - 39. As to all remaining factual allegations directed to Defendant Welch, or otherwise admitted, Defendant Welch denies any personal knowledge or involvement with Plaintiff's medical care and treatment.

V. RELIEF SOUGHT

40. Defendant Welch denies that Plaintiff is entitled to the relief that he seeks in his complaint.

AFFIRMATIVE DEFENSES

41. Plaintiff failed to state a claim upon which relief can be granted.
42. Plaintiff failed to exhaust his administrative remedies.
43. Plaintiff's claims are barred, in whole or in part, by the applicable statute

of limitations.

44. Plaintiff's suit for monetary damages against State Defendant as set forth in paragraph V is barred by the Eleventh Amendment to the United States Constitution.

45. Plaintiff failed to show that State Defendant is liable for alleged constitutional deprivations in the absence of any State Defendant's personal involvement.

46. Plaintiff is barred from suit imposing § 1983 liability against State Defendant on the basis of a *respondeat superior* theory.

47. To the extent of actual involvement, State Defendant acted in good faith, as a state officer, or as an individual in all actions which relate to the Plaintiff, and therefore, is immune from all claims alleged in Plaintiff's complaint.

Wherefore, State Defendant, Jim Welch, demands that judgment be entered in his favor as to all claims and against the Plaintiff as to all claims, together with attorneys' fees and such other relief as this Honorable Court deems just and appropriate.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Ophelia M. Waters
Ophelia M. Waters, I. D. #3879
Deputy Attorney General
Carvel State Office Building
820 North French Street, 6th Floor
Wilmington, Delaware 19801
(302) 577-8400
Counsel for State Defendant Welch

Dated: March 25, 2008

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2008, I electronically filed **Defendant Welch's Answer to Complaint** with the Clerk of Court using CM/ECF. I hereby certify that on March 25, 2008, I mailed by United States Postal Service, the document to the following non-registered party:

Adam Wenzke, pro se
SBI# 182595
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

/s/ Ophelia M. Waters

Deputy Attorney General
Department of Justice
820 N. French St., 6th Floor
Wilmington, DE 19801
(302) 577-8400
ophelia.waters@state.de.us